AS TO THE ADMISSIBILITY OF

Application No. 13611/88
by Claus CROISSANT
against the Federal Republic of Germany

The European Commission of Human Rights sitting in private on 8 December 1989, the following members being present:

MM. C. A. NØRGAARD, President
J. A. FROWEIN
S. TRECHSEL
G. SPERDUTI
A. S. GÖZÜBÜYÜK
A. WEITZEL
J. C. SOYER
H. G. SCHERMERS
H. DANELIUS
J. CAMPINOS
H. VANDENBERGHE
Mrs. G. H. THUNE
Sir Basil HALL
Mr. F. MARTINEZ
Mrs. J. LIDDY

Mr. J. RAYMOND, Deputy Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 3 December 1987 by Klaus Croissant against the Federal Republic of Germany and registered on 15 February 1988 under file No. 13611/88;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having regard to :

- the Commission's decision of 4 July 1988 to bring the application to the notice of the respondent Government and invite them to submit written observations on the admissibility and merits of the complaint that the applicant has to bear the costs caused by the appointment against his will of a third official defence counsel;

- the observations submitted by the respondent Government on 2 December 1988 and the observations in reply submitted by the applicant on 30 January 1989;

- the parties' oral submissions at the hearing of 8 December 1989;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a German citizen, born in 1931 and living in Berlin where he practises as a lawyer. He is represented by Mrs. Sybille M. Meier and Mrs. Angelika Grotehenne, both practising as lawyers in Berlin.

The facts, not in dispute between the parties, may be summarised as follows:

On 16 February 1979 the applicant was convicted by the Stuttgart Regional Court (Landgericht) of having supported a criminal association. He was sentenced to two years and six months imprisonment. Furthermore the applicant was disqualified to practise as a lawyer for a period of four years. He was also ordered to bear the costs of the proceedings including his necessary expenses.

At his trial the applicant was defended by two chosen defence counsel and two official defence counsel who had been appointed at his request. In addition, the Regional Court appointed a third official defence counsel, Mr. H. The applicant raised objections against the latter appointment, requesting that another lawyer, Mr. K., be appointed instead. These objections were rejected by the Court on 1 March 1978. The Court stated that the appointment of a third official defence counsel was necessary in view of the complexity and difficulty of the matter and the possible long duration of the trial. It served to ensure that the applicant was adequately defended throughout the trial. This decision was confirmed by the Stuttgart Court of Appeal (Oberlandesgericht) on 6 March 1978.

On 27 December 1979 the Treasury of the Stuttgart Regional Court (Gerichtskasse) fixed the costs of the proceedings in the total amount of DM 239,439.30, including DM 209,683.20 for fees and expenses paid to the three official defence counsel. The applicant lodged an objection (Erinnerung) against this bill (Kostenrechnung) arguing that free legal aid in the sense of Article 6 para. 3 (c) of the Convention was granted once and forever. Referring to the Commission's case-law (No. 9365/81, Dec. 6.5.82, D.R. 28 p. 229 and No. 9394/81, Dec. 6.5.82, unpublished) the Stuttgart Regional Court rejected the objection on 20 November 1986 as being unfounded.

The applicant lodged an appeal (Beschwerde) to the Stuttgart Court of Appeal. He maintained his arguments and added that they were particularly relevant in respect of the third defence counsel, Mr. H, who had been appointed against his will. The appeal was dismissed on 30 April 1987. The Court of Appeal confirmed the Regional Court's reasoning and added that the appointment of a third official defence counsel had been necessary to ensure an adequate defence, given the importance and complexity of the case and the foreseeable long duration of the proceedings. It was objectively justified that the presiding judge, by appointing a third official defence counsel in the interest of a proper and speedy administration of justice, ensured that the trial could be carried through without hindrance.

The applicant's constitutional appeal was rejected on 23 June 1987 by a group of three judges of the Federal Constitutional Court (Bundes-verfassungsgericht) as offering no prospects of success. The decision refers to the interpretation of Article 6 para. 3 (c) of the Convention by the Commission as being in no way arbitrary. It points out that the reason for the obligation of a convicted person to pay the costs of the proceedings is that he caused them by his own behaviour. While the principle of a fair trial requires that an indigent accused obtains free legal aid if necessary, it does not exclude that the costs caused thereby be imposed on him later in the case of his conviction. The law on costs offers other possibilities of taking into account subsisting economic difficulties of the convicted (such as payment facilities, protection against execution). Finally, the appellate court's finding, that the appointment of a third official defence counsel was necessary in view of the complexity of the matter and the foreseeable long duration of the criminal proceedings, does not disclose any arbitrariness.

The applicant's request for a remission was to no avail. Requests for a respite (Stundung) were likewise rejected. An appeal (Beschwerde) concerning the latest request was successful in third instance before the Stuttgart Court of Appeal which on 18 August 1989

quashed the decisions appealed from and sent the case back to the District Court for re-examination.

COMPLAINTS

The applicant requests the Commission to reconsider the question of whether free legal aid in the sense of Article 6 para. 3 (c) of the Convention means free once and for all. He refers to a decision of 23 March 1985 (published in NStZ 1985 p. 371) in which the Düsseldorf Court of Appeal held that free legal aid in the sense of Article 6 para. 3 (c) excludes imposing its costs on the accused in case of his conviction.

A further and particularly serious violation of Article 6 paras. 1 and 3 (c) arises in the applicant's opinion from the fact that he is required to bear the costs of a third official defence counsel who was appointed against the applicant's will for the sole purpose of ensuring that the trial could be carried through even if the chosen official defence counsel discontinued to defend the accused for one reason or another. A "substitute official defence counsel" (Ersatzverteidiger) was not provided for in the legal aid system. The appointment of a "substitute" defence counsel only served public interests and therefore the costs caused thereby had to be borne by the treasury. The applicant points out that the measure turned out to be unnecessary as the two official defence counsel whom he had accepted attended the trial throughout the 73 days of hearings.

PROCEEDINGS BEFORE THE COMMISSION

The application was introduced on 3 December 1987 and registered on 15 February 1988.

On 4 July 1988 the Commission decided to invite the respondent Government to submit observations on the admissibility and merits of the application and to limit their observations to the complaint under Article 6 para. 3 (c) of the Convention that the applicant has to bear the costs caused by the appointment against his will of a third official defence counsel. The Commission also invited the parties to comment on this complaint in the light of Article 1 of Protocol No. 1 to the Convention.

The Government's observations were received by a letter dated 2 December 1988 and the applicant's observations in reply were dated 30 January 1989.

On 9 May 1989 the Commission decided to invite the parties to a hearing on the admissibility and merits of the application. At the hearing which was held on 8 December 1989 the parties were represented as follows:

The Government

Mr. Meyer-Ladewig, Ministerialdirigent, Federal Ministry of Justice, Agent
Mr. Udo Heisseler, Presiding Judge at the Stuttgart Regional Court, Adviser
Mr. David Connor, Federal Ministry of Justice, Adviser

The Applicant

Mr. Klaus Eschen, lawyer

The applicant in person.

THE LAW

The applicant complains of a breach of Article 6 paras. 1 and 3 (c) (Art. 6-1, 6-3-c) of the Convention because he was ordered, after his conviction, to pay the costs caused by his official defence

counsel, in particular those of the third official defence counsel, who was appointed without the applicant's consent.

The Commission first notes that proceedings relating to the applicant's request for a respite or payment facilities are still pending. However, the respondent Government have not raised any objection under Article 26 (Art. 26) of the Convention as regards the exhaustion of domestic remedies and the Commission does not consider a request for respite as constituting an effective remedy in respect of the alleged violation. The decision on this request will mainly depend on an evaluation of the applicant's financial capacity to pay his debts but will not determine whether the imposition of the legal aid costs on the applicant violated his Convention rights. There is consequently no reason to reject the application under Article 26 (Art. 26) of the Convention for non-exhaustion of domestic remedies.

To the extent that it is relevant in the present case, Article 6 (Art. 6) of the Convention provides:

"1. In the determination of ... any criminal charge ..., everyone is entitled to a fair ... hearing ...

3. Everyone charged with a criminal offence has the following minimum rights:
...

(c) ... if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
..."

The Government consider that these provisions are concerned with the fairness of the proceedings and the effectiveness of the defence and these rights were not affected but strengthened by the appointment of three official defence counsel.

The Commission has already decided in previous cases that it is not contrary to Article 6 para. 3 (c) (Art. 6-3-c) of the Convention to impose legal aid costs on the convicted defendant and to claim reimbursement when his financial situation allows payment (No. 9365/81, Dec. 6.5.82, D.R. 28 p. 229, and No. 9394/81, Dec. 6.5.82, unpublished).

However, the principal complaint in the present case is the applicant's allegation that the imposition of costs for an additional third defence counsel, who was appointed only to secure the trial, was unreasonable and unfair. This complaint raises a complex issue of law under the Convention the determination of which must be reserved to an examination of the merits.

The Commission does not find it appropriate to declare inadmissible the remaining part of the application which concerns the imposition of the costs caused by the appointment of the other legal aid counsel as it equally concerns the interpretation of Article 6 para. 3 (c), (Art. 6-3-c) which is at issue in the entire case.

No other grounds for inadmissibility have been established.

For these reasons, the Commission

DECLARES THE APPLICATION ADMISSIBLE
without prejudging the merits of the case.

Deputy Secretary to the Commission President of the Commission

(J. RAYMOND) (C.A. NØRGAARD)